

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DENNIS WAYNE MORRISON,

Defendant.

Case No. 1:03-CR-103

Hon. Richard Alan Enslen

ORDER

This matter is before the Court on Defendant Dennis Wayne Morrison's Motion to Reconsider. On May 14, 2003, Defendant pled guilty to one count of possession of visual depictions of minors engaging in sexually explicit conduct in violation of 18 U.S.C. §§ 2252(a)(4)(B), 2252(b)(2), and 2256. On October 21, 2003, Defendant was sentenced by this Court to a term of 60 months incarceration. Judgment was entered on October 22, 2003. Defendant did not appeal his sentence and his conviction became final on November 4, 2003. Defendant moved for relief under 28 U.S.C. § 2255 on November 5, 2004. Thereafter, Defendant sought permission to amend his section 2255 motion in light of *United States v. Booker*, 125 S. Ct. 738 (2005). The Court denied Defendant's request on March 22, 2005, and Defendant's Motion asks the Court to reconsider that Order.

The Court held that "*Booker* does not apply retroactively on collateral review to cases 'already final on direct review' at the time the Supreme Court issued the *Booker* decision." (Mar. 22, 2005 Order citing *Humphress v. United States*, 398 F.3d 855, 860-63 (6th Cir. 2005)). "[M]otions for reconsideration that merely present the same issues ruled upon by the Court shall not be granted." W.D. MICH. LCIVR 7.4(a). Defendant's Motion to Reconsider posed the "question in the instant case

[a]s whether United States v. Booker (cite omitted) can be applied retroactively?” (Def.’s Mot. to Reconsider at 3). Accordingly, the Court will deny Defendant’s Motion to Reconsider because it asserts the same issue already ruled on by the Court and because he has not demonstrated that the Court’s March 22, 2005 Order suffers from a palpable defect nor has he shown that a different result is manifest.¹ W.D. MICH. LCivR 7.4(a).

THEREFORE, IT IS HEREBY ORDERED that Defendant Dennis Wayne Morrison’s Motion to Reconsider (Dkt. No. 50) is **DENIED**.

DATED in Kalamazoo, MI:
November 16, 2005

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE

¹ In Defendant’s Motion to Reconsider he also relies on *Dodd v. United States*, 125 S. Ct. 2478 (2005). Although it is unclear exactly how *Dodd*’s holding supports his Motion, what is clear is that any favorable application of *Dodd* would require retroactivity of *Booker*, and as this Court has already indicated, *Booker* does not apply retroactively on collateral review to cases already final on direct review. *Humphress*, 398 F.3d at 860-63. Therefore, to the extent that Defendant relies on *Dodd*, his Motion essentially presents the same issue previously ruled on by the Court.